

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BLYTHE COLSHER

Plaintiff

v.

CRITERION LABORATORIES, INC.

Defendant

CIVIL ACTION

NO. 21-5262

**ANSWER OF DEFENDANT CRITERION LABORATORIES, INC.
WITH AFFIRMATIVE DEFENSES TO
PLAINTIFF BLYTHE COLSHER’S COMPLAINT**

Defendant Criterion Laboratories, Inc. (“Defendant”), by its undersigned counsel, hereby files this Answer with Affirmative Defenses to Plaintiff Blythe Colsher’s Complaint (“Plaintiff”). The headings and numbered paragraphs correspond to those contained in the Complaint; however, Defendant denies all inferences drawn from the headings, and all factual allegations in the Complaint are denied unless specifically admitted herein.

THE PARTIES

1. Denied. This Paragraph is an introductory Paragraph to which no response is required, and therefore the allegations therein are denied. To the extent that a response is deemed required and to the extent that the allegations contained in this Paragraph constitute conclusions of law, no response is required and, therefore, they are denied.

2. Denied. After reasonable investigation, Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in this Paragraph and, therefore, denies the same.

3. Denied as stated. It is admitted only that Defendant is an environmental testing and consulting company that has a business address located at 400, Street Road, Bensalem, PA 19020. As to the remaining allegations of this Paragraph, to the extent that they state conclusions of law, no responsive pleading is required and they are therefore deemed denied.

4. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies that it engaged in any unlawful conduct.

5. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies that it engaged in any unlawful conduct.

JURISDICTION AND VENUE

6. Denied. Defendant incorporates by reference the foregoing paragraphs as though set forth herein in their entirety.

7. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied and Defendant further denies that it engaged in any unlawful conduct.

8. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied and Defendant further denies that it engaged in any unlawful conduct.

9. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied and Defendant further denies that it engaged in any unlawful conduct.

10. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied and Defendant further denies that it engaged in any unlawful conduct.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. Denied. Defendant incorporates by reference the foregoing paragraphs as though set forth herein in their entirety.

12. Denied. The allegations of this Paragraph state conclusions of law, to which no responsive pleading is required, and therefore, they are deemed denied. As to any remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore the allegations are denied.

13. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied and Defendant further denies that it engaged in any unlawful conduct. As to any remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

14. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied Defendant further denies that it engaged in any unlawful conduct. As to any remaining allegations of this

Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

15. Denied. The allegations of this Paragraph state conclusions of law, to which no responsive pleading is required, and therefore, they are deemed denied and Defendant further denies that it engaged in any unlawful conduct. As to any remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore the allegations are denied. Further answering, any EEOC Notice of Rights is a written document that speaks for itself and Defendant denies any characterization of the same.

16. Denied. The allegations of this Paragraph state conclusions of law, to which no responsive pleading is required, and therefore, they are deemed denied. As to any remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore the allegations are denied.

17. Denied. The allegations of this Paragraph state conclusions of law, to which no responsive pleading is required, and therefore, they are deemed denied. As to any remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore the allegations are denied.

18. Denied. The allegations of this Paragraph state conclusions of law, to which no responsive pleading is required, and therefore, they are deemed denied and Defendant further denies that it engaged in any unlawful conduct. As to any remaining allegations of this

Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore the allegations are denied.

MATERIAL FACTS

19. Denied. Defendant incorporates by reference the foregoing paragraphs as though set forth herein in their entirety

20. Denied as stated. It is admitted only that in October 2015, Defendant hired Plaintiff as a Lab Analyst and, at the time, Andrew Schwab was already employed with Defendant as a Lab Analyst. Thereafter, on April 1, 2016, Defendant promoted Plaintiff to Lab Supervisor and Quality Manager, while Mr. Schwab remained a Lab Analyst. All remaining allegations of this Paragraph are denied.

21. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are denied. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

22. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or

information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

23. Denied. To the extent that the allegations contained in this Paragraph constitute conclusions of law, no response is required and, therefore, they are deemed denied and Defendant further denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

24. Denied. To the extent that the allegations contained in this Paragraph constitute conclusions of law, no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct.

25. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

26. Denied as stated. It is admitted only that Plaintiff never complained about discrimination while employed with Defendant. The remaining allegations of this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the remaining allegations of this

Paragraph are denied and Defendant further denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

27. Denied as stated. It is admitted only that on February 5, 2021, Defendant terminated Plaintiff for legitimate and non-discriminatory reasons. To the extent that the remaining allegations of this Paragraph constitute conclusions of law, no response is required and, therefore, they are deemed denied and Defendant further specifically denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

28. Denied. To the extent that the allegations of this Paragraph constitute conclusions of law, no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are denied and Defendant further specifically denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

29. Denied. To the extent that the allegations of this Paragraph constitute conclusions of law, no response is required and, therefore, they are deemed denied and Defendant further denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

30. Denied as stated. It is admitted only that Andrew Schwab is Defendant's Lab Supervisor and Quality Manager. Further answering, Defendant incorporates its response to Paragraph No. 20 as if fully set forth herein. To the extent that the remaining allegations of this Paragraph constitute conclusions of law, no response is required and, therefore, they are deemed denied and Defendant further specifically denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

31. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

COUNT I – GENDER DISCRIMINATION
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED

32. Denied. Defendant incorporates by reference the foregoing paragraphs as though set forth herein in their entirety

33. Denied. The allegations of this Paragraph state conclusions of law, to which no responsive pleading is required, and therefore, they are deemed denied. As to any remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore the allegations are denied.

34. Denied. The allegations of this Paragraph state conclusions of law, to which no responsive pleading is required, and therefore, they are deemed denied. As to any remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore the allegations are denied.

35. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct.

36. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct.

37. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct.

38. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct.

39. Denied as stated. It is admitted only that in or about February 2021, Defendant terminated Plaintiff for legitimate and non-discriminatory reasons. As to the remaining

allegations of this Paragraph, to the extent that the allegations constitute conclusions of law, no response is required and, therefore, they are deemed denied and Defendant further specifically denies any unlawful conduct.

40. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

WHEREFORE, Defendant respectfully requests that this Court enter judgment in its favor and against Plaintiff on Count I of the Complaint, and award Defendant the costs and disbursements of this action, including reasonable attorneys' fees and such other relief as the Court may deem just and proper.

COUNT II – GENDER DISCRIMINATION
PENNSYLVANIA HUMAN RELATIONS ACT

41. Denied. Defendant incorporates by reference the foregoing paragraphs as though set forth herein in their entirety

42. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

43. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

44. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct.

45. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct.

46. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further specifically denies any unlawful conduct.

47. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further specifically denies any unlawful conduct.

48. Denied as stated. It is admitted only that in or about February 2021, Defendant terminated Plaintiff for legitimate and non-discriminatory reasons. As to the remaining

allegations of this Paragraph, to the extent that the allegations constitute conclusions of law, no response is required and, therefore, they are deemed denied and Defendant further specifically denies any unlawful conduct.

49. Denied. The allegations contained in this Paragraph constitute conclusions of law, to which no response is required and, therefore, they are deemed denied. To the extent that a response is deemed required, the allegations of this Paragraph are specifically denied and Defendant further denies any unlawful conduct. As to the remaining allegations of this Paragraph, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the same, and therefore denies the allegations.

WHEREFORE, Defendant respectfully requests that this Court enter judgment in its favor and against Plaintiff on Count II of the Complaint, and award Defendant the costs and disbursements of this action, including reasonable attorneys' fees and such other relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES AGAINST THE PLAINTIFF

By way of further answer, Defendant asserts the following affirmative defenses against Plaintiff in accordance with the Federal Rules of Civil Procedure as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant never authorized or ratified any alleged discrimination and/or unequal treatment that was not addressed by Defendant.

THIRD AFFIRMATIVE DEFENSE

Each and every employment decision made affecting Plaintiff was taken for legitimate non-discriminatory and non-retaliatory reasons.

FOURTH AFFIRMATIVE DEFENSE

Any damages sustained by Plaintiff are the result of her own actions or inactions.

FIFTH AFFIRMATIVE DEFENSE

Defendant's treatment of Plaintiff was lawful and in good faith at all times.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to compensatory damages, declaratory relief and/or injunctive relief.

SEVENTH AFFIRMATIVE DEFENSE

Defendant took no action in violation of public policy, Title VII and/or the PHRA.

EIGHTH AFFIRMATIVE DEFENSE

Defendant did not engage in any discrimination as alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, to the extent that they exceed the scope or type of claims asserted in the relevant underlying administrative charges of discrimination filed with the applicable federal or state agencies, or to the extent that they relate to the claims that were not investigated by the applicable federal or state agencies, subject to conciliation efforts, or properly averred in a timely civil action.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent they involve transactions or events, or seek damages or periods, outside any applicable statutory limitations period.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff has failed to mitigate her damages, Defendant is entitled to a set-off in the amount which Plaintiff did or could have earned through reasonable efforts.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims for back and front pay are barred to the extent that it would have been terminated based on "after acquired" evidence.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant has acted in good faith and have not acted willfully, deliberately, intentionally, outrageously, or with an extreme indifference to the rights of Plaintiff and, thus, Plaintiff is not entitled to punitive damages on the law or the facts.

FOURTEENTH AFFIRMATIVE DEFENSE

Any pre-existing emotional, psychological, and physical condition of Plaintiff prior to the alleged acts of misconduct was such that Defendant's act(s), if any, did not proximately cause or contribute in any manner to Plaintiff's alleged injuries and/or damages.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant expressly denies that they or any employee under their supervision acted in any manner which violated Plaintiff's rights, including engaging in discrimination, retaliation or other unlawful actions toward Plaintiff. If Plaintiff's rights were violated by an employee of Defendant, such violation occurred outside the scope of employment and without consent of Defendant, and Defendant never knew nor had reason to know of any such violation. Defendant did not condone, ratify, or tolerate any such conduct, but instead prohibited such conduct.

SIXTEENTH AFFIRMATIVE DEFENSE

Any alleged injury or damage suffered by Plaintiff was in no way caused by, or a result

of, any fault, act or omission by Defendant, but was caused by circumstances, persons or entities for whom Defendant is not and may not be held responsible.

SEVENTEENTH AFFIRMATIVE DEFENSE

Because Plaintiff's claim herein is frivolous, Defendant requests that the court award them reasonable attorney fees and all costs incurred as a result of this proceeding pursuant to 42 Pa C.S.A. § 2503(9).

EIGHTEENTH AFFIRMATIVE DEFENSE

The extent to which Plaintiff's Complaint may be barred by any remaining affirmative or other defenses, including those contemplated by Rule 8 of the Federal Rules of Civil Procedure, they cannot be determined at this time without the benefit of discovery. Thus, as separate and alternative defenses to Plaintiff's Complaint, Defendant reserves its right to assert all affirmative and other defenses as appropriate.

WHEREFORE, Defendant demands judgment dismissing Plaintiff's Complaint and granting attorneys' fees and costs, and such other relief as the Court deems just and proper

BUNKER & RAY
BY: MARIE SARKEES BARBICH



Attorneys for Criterion Laboratories, Inc.

Dated: April 4, 2022